

CAUSE NO. D-1-GN-17-005152

FLOSPORTS, INC.	§	IN THE DISTRICT COURT
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
WWN, INC.	§	<u>126TH</u> JUDICIAL DISTRICT

PLAINTIFF FLOSPORTS, INC.'S ORIGINAL PETITION

Plaintiff FloSports, Inc. ("Plaintiff" or "FloSports") hereby files this original petition and asserts the following claims against Defendant WWN, Inc. ("Defendant" or "WWN").

I. BACKGROUND

1. WWN contractually promised that "all data [it] provided . . . regarding financial performance of events [it] put on . . . was accurate, reliable and truthful." Far from honoring that commitment, WWN induced FloSports to pay it hundreds of thousands of dollars based on data that was not only inaccurate and unreliable; it was just plain false.

2. WWN negligently or otherwise misrepresented the number of fans purchasing pay-per-view and video-on-demand access to their fighting events. When pressed for the data that backed up WWN's spreadsheet of viewership, WWN originally claimed it had lost or deleted that information. Ultimately, WWN sent records listing many subscribers more than once and including purchasers of DVDs instead of broadcast services. Even with that artificial inflation of viewership, the numbers WWN attempted to account for were far less than those represented in its initial spreadsheet.

3. In reliance on WWN's false statements, FloSports invested time and money that it will never recover in the market. Since viewership drives FloSports' subscription-base and its advertising revenue, WWN's misrepresentations robbed FloSports of the benefit of FloSports' bargain.

II. DISCOVERY CONTROL PLAN

4. Plaintiff intends discovery to be conducted under Texas Rule of Civil Procedure 190.3 (Level 3).

III. CLAIM FOR RELIEF

5. For the purposes of Rule 47 of the Texas Rules of Civil Procedure, FloSports states it is seeking damages of more than \$1 million.

IV. PARTIES

6. Plaintiff FloSports is a Delaware corporation with its principal place of business located at 2922 East Cesar Chavez Street, Austin, Texas 78202.

7. Defendant WWN is a Florida corporation. WWN may be served with process by serving its registered agent, Catherine A. Huett, 7383 Monterey Boulevard, Tampa, Florida 33625-6583.

V. CAUSES OF ACTION

A. Breach of Contract

8. WWN breached the Exclusive Media Event Agreement (the “Agreement”). FloSports performed its obligations under the Agreement; all conditions precedent have been met and presentment has been made. FloSports suffered damages as a result of WWN’s breaches. In addition to damages, FloSports is entitled to its costs, prejudgment interest and attorneys’ fees.

B. Negligent Misrepresentation

9. Negligently or otherwise WWN misrepresented the number of fans purchasing pay-per-view and video-on-demand access to their fighting events. WWN did not use reasonable care in obtaining or communicating the information. The misrepresentations and omissions were material. A reasonable person would attach importance to and be induced to act on WWN’s representations. WWN had reason to expect that FloSports would rely on its representations, and FloSports did, indeed, reasonably and justifiably rely upon them.

VI. DAMAGES

10. Plaintiff respectfully requests that the Court enter judgment for its actual damages, consequential damages, special damages, attorneys' fees, interest and costs.

VII. ATTORNEYS' FEES

11. Pursuant to TEX. CIV. PRAC. & REM. CODE § 38.001(8) and the terms of the Agreement, FloSports is entitled to recover the reasonable and necessary attorneys' fees and costs incurred in the prosecution of this action. FloSports has made proper presentment.

Respectfully submitted,

RICHARDSON + BURGESS LLP

221 West 6th Street, Suite 900

Austin, Texas 78701-3445

Telephone: (512) 482-8808

Facsimile: (512) 499-8886

Email: kburgess@richardsonburgess.com



By: _____

Karen C. Burgess

State Bar No. 00796276

**ATTORNEYS FOR PLAINTIFF
FLOSPORTS, INC.**

CAUSE NO. _____

FLOSPORTS, INC.	§	IN THE DISTRICT COURT
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
WWN, INC.	§	_____ JUDICIAL DISTRICT

**PLAINTIFF FLOSPORTS, INC.'S
REQUEST FOR DISCLOSURE AND FIRST SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION TO DEFENDANT WWN, INC.**

To: Defendant WWN, Inc., by and through its registered agent, Catherine A. Huett, 7383 Monterey Boulevard, Tampa, Florida 33625-6583

Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Defendant WWN, Inc. ("WWN") is required to disclose, within fifty (50) days of service of this request, the information or material described in Rule 194.2 of the Texas Rules of Civil Procedure.

Pursuant to Rules 193, 196 and 197 of the Texas Rules of Civil Procedure, WWN is required to serve a written response and objections, if any, to this first set of interrogatories and requests for production within fifty (50) days from the date of service. WWN is further required to produce for inspection and copying at the offices of Richardson + Burgess, LLP, 221 West 6th Street, Suite 900, Austin, Texas 78701-3445, all of the requested documents. The response and production must be supplemented under the circumstances specified in the Texas Rules of Civil Procedure.

Interrogatory No. 1

Describe your negotiations with Plaintiff leading up to the agreements between the parties. Include how you first knew Plaintiff; the person who made the initial contact between the parties; and the conversations you had with Plaintiff during negotiations, including the parties to the conversations, date of the conversations, means of conversation, and the substance of the conversations.

Interrogatory No. 2

Identify any conversations you had with Plaintiff regarding the number of fans purchasing pay-per-view and video-on-demand access to your fighting events. Include the individuals to each

conversation, date of the conversation, means of communication, and the substance of the communication.

Interrogatory No. 3

Detail your method for calculating the number of fans purchasing pay-per-view and video-on-demand access to your fighting events.

Request for Production No. 1:

All agreements and drafts of agreements between you and Plaintiff. Include in your response e-mails and other electronic items (including deleted or archived items).

Request for Production No. 2:

Produce all documents and communications (electronic or otherwise, including deleted or archived items) regarding any agreements between you and Plaintiff. Include in your response e-mails and other electronic items.

Request for Production No. 3:

Produce all documents and communications (electronic or otherwise, including deleted or archived items) reflecting or relating to negotiations between you and Plaintiff. Include in your response e-mails and other electronic items.

Request for Production No. 4:

Produce all documents and communications (electronic or otherwise, including deleted or archived items) reflecting or relating to the number of fans purchasing pay-per-view and video-on-demand access to your fighting events.

Request for Production No. 5:

All internal communications regarding Plaintiff. Include in your response emails and other electronic items (including deleted or archived items).

Request for Production No. 6:

All notes from any conversations with Plaintiff. Include in your response emails and other electronic items (including deleted or archived items).

Respectfully submitted,

RICHARDSON + BURGESS LLP

221 West 6th Street, Suite 900

Austin, Texas 78701-3445

Telephone: (512) 482-8808

Facsimile: (512) 499-8886

Email: kburgess@richardsonburgess.com



By: _____

Karen C. Burgess

State Bar No. 00796276

**ATTORNEYS FOR PLAINTIFF
FLOSPORTS, INC.**

CIVIL CASE INFORMATION SHEET

CAUSE NUMBER (FOR CLERK USE ONLY): _____ COURT (FOR CLERK USE ONLY): _____

STYLED FLOSPORTS, INC. V. WWN, INC..

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

1. Contact information for person completing case information sheet:		Names of parties in case:		Person or entity completing sheet is:	
Name: <u>Karen C. Burgess</u> Email: <u>kburgess@richardsonburgess.com</u> Address: <u>221 W 6th St Ste 900</u> Telephone: <u>(512) 482-8808</u> City/State/Zip: <u>Austin, TX 78701</u> Fax: <u>(512) 499-8886</u> Signature: <u>/s/ Karen C. Burgess</u> State Bar No: <u>00796276</u>		Plaintiff(s)/Petitioner(s): <u>FLOSPORTS, INC.</u> Defendant(s)/Respondent(s): <u>WWN, INC.</u>		<input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____ Additional Parties in Child Support Case: Custodial Parent: _____ Non-Custodial Parent: _____ Presumed Father: _____	
[Attach additional page as necessary to list all parties]					
2. Indicate case type, or identify the most important issue in the case (select only 1):					
Civil			Family Law		
Contract	Injury or Damage	Real Property	Marriage Relationship	Post-judgment Actions (non-Title IV-D)	
<i>Debt/Contract</i> <input type="checkbox"/> Consumer/DTPA <input checked="" type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: _____ <i>Foreclosure</i> <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract: _____	<input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation <i>Malpractice</i> <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: _____ <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises <i>Product Liability</i> <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: _____ <input type="checkbox"/> Other Injury or Damage: _____	<input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: _____ Related to Criminal Matters <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other: _____	<input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void <i>Divorce</i> <input type="checkbox"/> With Children <input type="checkbox"/> No Children	<input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other Title IV-D <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocals (UIFSA) <input type="checkbox"/> Support Order	
Employment	Other Civil		Other Family Law	Parent-Child Relationship	
<input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment: _____	<input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property		<input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other: _____	<input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Paternity/Parentage <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child: _____	
Tax	Probate & Mental Health				
<input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax	<i>Probate/Wills/Intestate Administration</i> <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings <input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other: _____				
3. Indicate procedure or remedy, if applicable (may select more than 1):					
<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action		<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment		<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover	
4. Indicate damages sought (do no select if it is a family law case):					
<input type="checkbox"/> Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorneys fees <input type="checkbox"/> Less than \$100,000 and non-monetary relief <input type="checkbox"/> Over \$100,000 but not more than \$200,000 <input type="checkbox"/> Over \$200,000 but not more than \$1,000,000 <input checked="" type="checkbox"/> Over \$1,000,000					